

## DELTA PROTECTION COMMISSION

March 25, 1993

Tracy, California

Meeting Minutes

### I. CALL TO ORDER

Tom Torlakson called the meeting to order at 6:30 pm. Rick Frank read the roll. Present were Commissioners Tom Torlakson, Heather Fargo, Clyde Bland, Ryan Broddrick, Robert Calone, Bill Curry, Darrell Ferreira, Toby Johnson, Joel Keller, Pat McCarty, Steve Mello, Elizabeth Patterson, Bob Potter, William Salmon, Dick Troy, A.J. Yates, and Senator Patrick Johnston, ex-officio commission member. Interim staff present: Ross Sargent, Interim Executive Director, Rick Frank, Deputy Attorney General, and Julius Tsai, Special Assistant at the Resources Agency.

### II. PLEDGE OF ALLEGIANCE

### III. APPROVAL OF FEBRUARY MINUTES

To address concerns raised by Dr. Franklin Ernst, Mr. Sargent explained that the Commission's vote for Ms. Fargo as the vice-chair was 9-8 and not 10-7, as reported in the minutes. Mr. Sargent read the roll and indicated how the Commissioners had voted. Mr. Johnson proposed a motion to adopt the minutes with the amendments indicated by Mr. Sargent. Mr. Ferreira seconded the motion, adding an additional amendment. Mr. Ferreira had seconded Mr. Troy's motion at the February meeting to delegate the redrafting of the job description to the Personnel Subcommittee, and had voted yes on that motion. With those amendments, the Commission unanimously adopted the February minutes.

### IV. INTERIM EXECUTIVE DIRECTOR REPORT

In the interest of increased public access, Mr. Sargent suggested that five copies of future public Commission mailings be provided to the clerks of the Boards of Supervisors of the five Delta counties within the statutory Delta. The Commission concurred and directed staff to implement the recommendation.

Ms. Patterson suggested investigating the possibility of charging a fee to recover some of the postage and reproduction costs involved with disseminating public material. Staff will investigate the feasibility of this suggestion. Mr. Sargent noted that he would look over the current mailing list, which numbered around 300, and remove those entries which were redundant or outdated.

Mr. Sargent brought up for approval the expenses incurred so far by the Contra Costa County Personnel Board in the executive director search, currently at \$1872.40, with \$609 for advertising, \$392 for printing, and \$871 for postage. A motion was made by Mr. McCarty, and seconded by Ms. Fargo, to approve this expense, and it carried unanimously.

Mr. Sargent asked whether the Commissioners wanted to set a cap on the amount that Contra Costa County Personnel Board could spend, or if they wanted to approve expenses on a month-by-month basis.

Mr. Potter suggested that the Commission needed both a budget for the selection process and an overall budget for the operation of the Commission. Mr. Salmon thought that that should be the new Executive Director's task.

With regard to the selection process, Mr. McCarty felt that the Contra Costa County Personnel Department was doing a good job, and that the costs were reasonable given the scope of work. Ms. Fargo said that she preferred a month-to-month report on the expenses, foreseeing no major expenses in the near future. Mr. Mello agreed that it would be difficult to put an artificial cap on the budget without an understanding of what the costs involved were going to be.

Mr. Potter cautioned that the Commission had no revenue stream and asked staff how the money that was loaned to the Commission was going to be repaid. Mr. Frank noted that there was a 1998 repayment date specified in the Delta Protection Act. Mr. Mello asked if the funds that could be generated through a surcharge on boating and waterway and fish and game fines were included in the original \$250,000, or were in addition to that sum of money. Mr. Frank replied that that money was in addition to the \$250,000.

Staff was instructed to present expenditures to the Commission on a month-by-month basis.

Mr. Sargent moved to the topic of Commission subcommittees, which were to be formed in the areas of agriculture, environment and recreation. Mr. Sargent asked the Commission's approval to initiate communications with various interest groups and individuals in anticipation of the formation of these subcommittees. A motion was made by Mr. Salmon, seconded by Mr. McCarty, to approve this action. The motion carried unanimously.

Mr. Sargent suggested that the Commission might want a logo, for which a competition could be organized in Delta schools. Mr. Broddrick supported the idea, saying that it would be a positive way to educate young people about the heritage of the Delta. He suggested that such a contest be open to students in grades 7-12. Mr. Broddrick moved, seconded by Mr. Mello, that staff investigate this idea. The motion passed unanimously. Mr. Broddrick offered the assistance of the Department of Fish and Game's Conservation Education Program.

## V. RECOGNITION OF THE DELTA ADVISORY PLANNING COUNCIL

Senator Pat Johnston addressed the Commission, recognizing the past work of the

Delta Advisory Planning Council. The Council was formed by representatives of the five Delta counties -- San Joaquin, Contra Costa, Solano, Yolo, and Sacramento. The Council had played a pioneering role in the planning for and conservation of Delta resources. Senator Johnston presented certificates of appreciation to the former members of DPAC who were present: Robert Gromm, Dante Nomellini, Toby Johnson, Robert Gillispie, and Tom Torlakson.

Mr. Gromm, who was a chairman of the Council, spoke of DPAC's history. In 1964, a group of county Recreation Commissioners formed an intercounty Recreation Committee, later merging with an intercounty Planning Commissioners Committee to form DPAC. A full-time director was hired in 1972 along with other staff to work toward a Delta Master Plan and a Delta Recreation Plan. DPAC was funded by contributions and support from each of the counties involved. The counties contributed based on the mileage of waterfront in the county. Over the years of its work, DPAC issued several documents relating to Delta issues. Mr. Gromm also recognized the dedication of the DPAC staff over the years.

#### DEPUTY ATTORNEY GENERAL'S REPORT

Mr. Frank introduced Commissioner Bill Curry, who will represent the Department of Boating and Waterways as Director Banuelos' designee.

Mr. Frank reminded the Commission that it must adopt a conflict of interest code by July 1. Mr. Frank will work further with the Commission and the Fair Political Practices Commission on the code, tentatively scheduled for a formal Delta Protection Commission hearing as part of the June meeting.

Mr. Frank informed the Commissioners that Christine Sproul, Assistant Secretary for Legal Affairs at the Resources Agency, would be departing the Agency later in the month. She has served at the Resources Agency for 8 years. In a letter to Ms. Sproul from Attorney General Dan Lungren, the Attorney General commended her for her service in the implementation of the California Environmental Quality Act, the Tahoe Conservancy, and the Delta Protection Commission.

Mr. Torlakson suggested that the Commission write Ms. Sproul a letter expressing its appreciation for her contributions.

#### INFORMATION BRIEFINGS

Sergeant Gerald Rector of the San Joaquin County Sheriff's Department gave a presentation on the county's activities in marine law enforcement, showing an informational video as well as providing a handout. He was concerned that additional assessments would cause the counties hardship, which already place assessments on existing fines to help support dwindling local funds.

Mr. Frank Dowd gave a presentation on the Department of Boating and Waterway's activities. For more than 20 years, the Department has been providing financial support to counties with high non-resident boating populations to offset the impact of boaters on local resources. The Department gives out about \$3.4 million a year to 30 counties and two cities. The Department will likely face further budget cuts this fiscal year, constraining its assistance to local governments. This will cause difficulties in many counties, where the costs of marine enforcement activities exceed that which can be raised through local property taxes on boats or financial aid from the State.

DBW provides educational programs for K-12 students in boating safety and awareness, and has established Aquatic Safety Centers at universities around the state. In addition, DBW plans to provide a home study course which, when completed, will entitle a person to discounted boat insurance rates. The Department publishes 45 different pamphlets a year, including maps, safety guides, and others.

Commissioner Broddrick described a new unit within the Department of Fish and Game, the Delta-Bay Enhanced Enforcement Program. This six-person unit spends 97% of its time on the waterways of the Delta, a great increase over the regular program. The program focuses on anadromous fisheries, disturbance of wildlife habitat, environmental degradation, and pollution violations. Since its establishment last summer, DFG has made 18,367 contacts, resulting in 2,254 citations, and has seized 5,412 striped bass.

Commissioner Bland asked Sgt. Rector about illegal riprap that he had mentioned in his presentation. Sgt. Rector explained that individuals sometimes trespass on private property to create illegal docking facilities. They then reinforce the banks with concrete.

Mr. Salmon asked Sgt. Rector to elaborate on the impact of 10% assessment on boating and waterways violations as outlined in the Delta Protection Act. Sgt. Rector explained that the difficulty was that the counties, lacking local funds in the post-Proposition 13 era, were already reaching the limits on what they could assess in addition to existing fines, so much so that a violation ticket could end up costing over two times as much as its stated rate.

Ms. Fargo asked Mr. Dowd if Department of Boating and Waterways financial assistance was also available to cities. Mr. Dowd replied that it was, but that any money given to a city would take away from the county's share, and vice versa.

After general acknowledgement of the difficulties that local governments have in providing adequate marine patrol, Mr. Sargent suggested that the Commission could inquire by letters to the counties what their perspective on this issue was and the issues they saw this year in terms of meeting costs of the patrols. Mr. Sargent would work on developing such a letter.

## EXECUTIVE DIRECTOR SELECTION

Mr. McCarty informed the Commissioners that the job description had been finalized, the salary set, and the advertisement begun. The final date for submittal of applications was

April 2. Mr. Harry Sistermann of the Contra Costa Personnel Board informed the Commissioners that, to date, 1,400 applications had been sent out, 108 phone calls had been received expressing interest in the position, and six completed applications had been received.

Mr. McCarty reviewed the major phases of the proposed selection process: April 2 was the deadline for completed applications.

On April 23, an expert panel made up of three persons selected by the Personnel Subcommittee would conduct a paper screening of the applications.

The next stage would be the first of two interviews. Originally, Commissioners Mello and Broddrick had volunteered to sit on a second committee of experts, but it was determined that that arrangement would violate the Bagley-Keene Open Meeting Act. Mr. Frank explained that a committee of board members, deliberating in conjunction with outside experts would constitute an inappropriate and illegal expansion of the interviewing committee.

Ms. Patterson asked whether the mere presence of experts in any capacity constituted an illegal expansion. Mr. Frank replied that as long as the expert panel did not hold ultimate decision-making authority, then practice was legal.

Mr. McCarty explained the time commitment required for each of the phases of the process: Phase 2 (paper screening) would take 3 full days, Phase 2 (interview by subcommittee of Commission) would take 2 full days, and Phase 3 (interview by full Commission) would take 1 full day. The final interview and selection would take place on May 27.

Mr. Torlakson asked how many candidates should be in the first interviewing pool. It was the general opinion that 5-10 would be an adequate number. Mr. Sargent noted that the Commissioners could also recommend candidates for interview if they so chose. Mr. Ferreira suggested picking three candidates from the pool to move on to the final phase.

Mr. Sargent noted that the Commissioners also had the option of reviewing the candidates rejected during Phase 1 screening and putting any name back into Phase 2 for inclusion in the initial interview. As to the question of applicants' privacy raised by Mr. McCarty, Mr. Frank said that he would investigate the extent to which the list of applicants and related materials could be kept confidential. Mr. Sistermann added that the Contra Costa Personnel Board had a policy of asking candidates if they wanted their materials to remain confidential. Another point he stressed was that the applicants be told that they should not call Commissioners directly during the application process.

Ms. Fargo remarked that it would be important to treat all the applicants fairly. If the interviews were to be public, would there be a "dome of silence" so that candidates who had not yet been interviewed would not be privy to the public proceedings while another candidate was being interviewed? Mr. McCarty suggested that the candidates be sequestered until their turn to be interviewed came up. Mr. Frank noted that only the executive director selection process need be public, as required by the Brown and Bagley-Keene Acts.

Mr. Mello was concerned that the experts selected have not only experience in interviewing and screening procedures, but knowledge of basic Delta issues in a way that would not bias their decisions.

Mr. Mello also asked about the criteria by which applicants would be evaluated. Mr. Sistermann replied that the Personnel Subcommittee could draft a set of evaluation criteria and standard interview questions, with the input of all Commissioners.

Mr. Potter asked for a clarification of who was on the Personnel Subcommittee. Mr. Torlakson said that he himself was, as was Mr. McCarty. He suggested that the interviewing subcommittee be made up of Mr. McCarty, Mr. Broddrick, Mr. Mello and two others. Mr. McCarty reminded the Commissioners that this job would entail two full days of work.

Mr. Keller asked how many people would ultimately be considered by the full Commission. Mr. Sargent replied that at least three candidates would be considered. It was the consensus of the Commission that the finalists should not be ranked but simply brought forward to the May 27 meeting.

Mr. Sistermann said that the Commissioners would be given an orientation that day. Mr. Johnson said that it would be a good idea to have five or six standardized questions to ask. Mr. Sistermann suggested that each applicant be questioned for no more than one hour. Interviewing three candidates and the 45 minutes or so required for the orientation would put the meeting at over four hours.

Mr. Mello asked how much time there would be between the selection of the three finalists and the final interview. Mr. McCarty replied that there might be two days or so, with the amount of time needed depending upon the number of people interviewed in Phase 3. Mr. Sargent offered to hand-deliver the materials to the Commissioners, if need be, to expedite the process. A question was raised as to at what point this material would become public, and Mr. Frank said that he would investigate that issue and report back to the Commission.

Mr. Johnson asked what kind of evaluation system there would be. Mr. Sistermann said that a rating sheet would be developed, and Mr. Frank said that the Commission would take a vote to select the executive director from among the three finalists.

The question was raised of the proportion of votes needed to select an executive director from the final pool, whether a majority of the members present, of a quorum, or a simple plurality. There were complications since there were three candidates, and no one candidate might win a majority. Mr. Frank read a passage from the Delta Protection Act which stated that all decisions must be majority decisions. Therefore, if in the first vote one candidate failed to win a majority, the top two candidates would be voted on again until that majority was arrived at.

Mr. Potter, returning to an earlier point, said that he would be comfortable with having an expert panel knowledgeable about the Delta as well as interviewing procedure. Second, he suggested a set number of questions, perhaps three, to be distributed to the candidates before the final interview for them to prepare responses.

Mr. Troy suggested that a verification of references and educational backgrounds be performed on the candidates in Phase 3, so that the finalists would be fully ready for the Commission's consideration at the May 27 meeting.

Ms. Patterson moved to accept the Personnel Subcommittee's recommendations, Mr. Torlakson clarifying that this entailed interviewing 5-10 candidates in Phase 2, and

interviewing 3 candidates in Phase 3. Mr. Calone seconded the motion, which carried unanimously.

Ms. Patterson and Mr. Ferreira volunteered to serve on the Phase 2 interviewing subcommittee. Ms. Fargo and Mr. McCarty pointed out that since the process would be public, all the other Commissioners could attend if they so chose, as observers.

It was decided to hold the May 27 meeting at 9 am in Brentwood.

## PUBLIC COMMENT

Mr. Seth Cockrell raised concerns regarding the funding of marine patrols, as a boater and a member of the Contra Costa County Marine Patrol Ad Hoc Committee. He felt that the issue was a statewide problem, and that a localized assessment as a solution would unfairly penalize local citizens. One proposed solution in regard to the Boating Safety and Enhancement Program would be to reduce the requirement that counties fund their marine patrols 100% before begin able to qualify for state matching grants. This should be reduced to 50%. Another solution would be to raise boating taxes. Mr. Cockrell noted that of the approximately 800,000 boaters in the State, only 300,000 or so were on the tax rolls. He commended DBW for its programs and hoped that they would work better with some minor changes.

Mr. Greg Zlotnick, public outreach director for the Bay-Delta Oversight Council (BDOC) introduced himself and made the staff of BDOC available to the Commission. Since there may be some overlap in the issues addressed by the two bodies, and Mr. Zlotnick said that he would be available to help facilitate communications between the two entities.

Dr. Franklin Ernst thanked Commissioners who had sent him their primary oaths of office so far. Commenting on the map which accompanied the Delta Protection Act, he questioned its precision in defining the specified boundaries of the primary zone, which crossed parcels under varying ownership, and stated that there were anachronistic entries on the map. Dr. Ernst said there needed to be a firm scientific basis for the map. Mr. Sargent replied that he would review the map in terms of its clarity and definitions.

## COMMISSIONER COMMENTS

Commenting on the Delta map, Mr. Mello noted that the secondary zone as depicted was bigger than he generally knew it to be around the area of Thornton. Mr. Sargent said that the map was a composite document utilizing the general plans of the various counties. Mr. Mello asked why various Nature Conservancy projects that he knew of were not included in the primary zone. Mr. Sargent replied that it was thought that since those lands were under conservation management already, it was not as necessary that they be included in the primary zone. The secondary zone was derived by subtracting the area of the primary zone from the outer boundaries of the statutory Delta.

Mr. McCarty asked whether or not the Commission could issue a Delta environmental license plate to help repay the \$250,000 that the Commission was initially loaned. Mr. Sargent said that he would look into this matter, noting also that Senator Tim Leslie was carrying a bill creating an environmental license plate for the Lake Tahoe region.

Mr. Calone requested section maps to show where the primary zone crossed various parcels. Mr. Sargent said he would investigate that. Mr. McCarty suggested the use of assessor parcel maps. Mr. Potter offered the assistance of the Department of Water Resources, if needed.

Mr. Sargent asked the Commissioners what their wishes were regarding the informational briefing at the next meeting. Mr. Potter said that DWR would be issuing its annual levees report soon, and would be happy to provide that information to the Commission.

Mr. Fargo asked if the informational briefings could be made after the Commission had finished deliberating on business at hand.

Mr. Torlakson adjourned the meeting at 9:35 pm.